

Remarks

The non-final Office Action dated May 5, 2011, presents the following claim rejections: claims 1-8 and 10-18 stand rejected under 35 U.S.C. § 103(a) over Joseph (U.S. Patent No. 6,993,645) in view of Krishnamoorthy (U.S. Patent No. 5,790,753); claim 17 stands rejected under 35 U.S.C. § 103(a) over the '645 reference in view of the '753 reference further in view of Hadi (U.S. Patent No. 7,233,999); claim 9 stands rejected under 35 U.S.C. § 103(a) over the '645 reference in view of the '753 reference further in view of Perlman (U.S. Patent No. 7,200,859); and claim 19 stands rejected under 35 U.S.C. § 103(a) over the '645 reference in view of the '753 reference further in view of Worely (U.S. Patent No. 7,509,639). In the following discussion, Applicant traverses all of the rejections and, unless explicitly stated by the Applicant, does not acquiesce to any objection, rejection or averment made in the Advisory Action or the Office Action(s) of record.

Applicant respectfully traverses the rejections of claims 1-19 under 35 U.S.C. § 103(a) for lack of correspondence. Each of the rejections relies upon the same improper combination of the primary '645 reference with the teachings of the secondary '753 reference. The additionally-cited references cure the deficiencies of this underlying combination. Accordingly, Applicant traverses and addresses all of the rejections in this context.

The '753 reference does not appear to teach a user device that retrieves multimedia content from a third party device while the user device is booting. The Office Action has not shown that the '753 reference relates to retrieving "multimedia content." Rather, the Office Action only alleges downloading of "application software." See Office Action, pp. 3, 5, 7-8. Notwithstanding, the '753 reference does not appear to describe downloading software (or multimedia content) during a boot program, or downloading of software generally. Rather, it appears that the '753 reference describes downloading the boot program itself. The cited portion of the '753 reference states, "initial downloading application software 810, O/S software 820, and protocol stacks 830 and 840 are stored in the ROM 715 for immediate execution as a "boot" program by the processor 710 of FIG. 7." Col 5:56-60. The cited portion of the '753 reference appears to describe a downloading software application present on the processor, but does not describe its operation during a boot program. Moreover, the cited portion of the '753

reference does not appear to describe operation of the boot program. Rather, these aspects appear to be directed toward downloading a program for subsequent booting (downloading then separately booting). Therefore, the '753 reference does not appear to teach software downloaded during the boot program.

Moreover, it appears that the “downloading application software 810” of the '753 reference does not appear to operate during a boot program, but during the main function of the system. The '753 reference's apparent description of the operation of the “downloading application software 810” is detailed as: “A downloading application 810 requests a specific software program (APP) in step 1210 using the control channel 133...In step 1230, the program is played, e.g., downloaded, as a continuous bit stream over the video channel 133.” Col. 7:34-41. It appears that the “downloading application software 810” operates to stream video during the main operation of the system. Further, the operation of the “downloading application software 810” does not point to a boot program during the description of its operation. Therefore, the '753 reference does not appear to download software during the boot program.

Because the reference does not teach these aspects, no reasonable interpretation of the asserted prior art can provide correspondence. As such, the rejections fail.

Applicant further traverses the 35 U.S.C. § 103(a) rejections of claims because the Office Action has not specified any proper articulated reason for the proposed modification as suggested by the references. This approach is contrary to the requirements of § 103 and relevant law. *See, e.g., KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (U.S. 2007) (“A patent composed of several elements is not proved obvious merely by demonstrating that each element was, independently, known in the prior art.”). “[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” (*In re Kahn*, 441 F. 3d 977, 988 (Fed. Cir. 2006) cited with approval in *KSR*). The Office Action alleges that the combination is obvious “because of the advantage of immediate tailored updates (Joseph [the '645 reference], col. 6 lines 63-67).” Page 3 of the Office Action. This advantage or suggestion does not appear to be present in the '645 reference. The Office Action appears to generally state that the combination would improve the system, but

does not identify a problem that the combination is directed to address. Unless one skilled in the art would understand that problem to be present in the '645 reference, there would be no motivation to combine the teachings in order to solve the unrecognized/non-existent problem. As a result, the rejection is improper and should be removed.

In view of the remarks above, Applicant believes that each of the rejections has been overcome and the application is in condition for allowance. Should there be any remaining issues that could be readily addressed over the telephone, the Examiner is asked to contact the attorney overseeing the application file, Juergen Krause-Polstorff of NXP Corporation at (408) 474-9062.

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